IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

T.R.C.No.402 of 1998

AGAINST THE ORDER DATED 07/10/1998 IN T.A.No.165 OF 1998 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, THIRUVANANTHAPURAM.

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PETITIONER:-

M/S.SOUTH TRAVANCORE DISTILLERIES AND ALLIED PRODUCTS,
NEYYATTINKARA, REP. BY ITS GENERAL MANAGER,
Mr.SARAVANA GOPU.

BY ADV. SRI.ANIL D.NAIR.

RESPONDENT:-

STATE OF KERALA.

BY SPECIAL GOVERNMENT PLEADER (TAXES) SRI.V.V.ASHOKAN.

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 18/06/2007, ALONG WITH T.R.C.NO.211 OF 1999 AND CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

H.L.Dattu,C.J. & K.T.Sankaran,J.

T.R.C.Nos.402/1998, 211/1999, 212/1999, 213/1999, 214/1999, 215/1999, 216/1999, 217/1999, 218/1999, 219/1999, 220/1999 and 221/1999

Dated, this the 18th day of June, 2007

ORDER

H.L.Dattu,C.J.

In all these Tax Revision Cases the assessee is the same. Therefore, they are clubbed, heard and disposed of by this common order.

2. Provisional assessments for the years 1990-91 to 1993-94 and for the months of April to November, 1997 have been completed by the assessing authority. Aggrieved by those provisional assessment orders, the assessee had carried the matter up to the Sales Tax Appellate Tribunal. Even before the Tribunal the assessee did not succeed. Therefore, the assessee has filed these Tax Revision Cases before us.

3. The assessee has raised the following questions of law for our consideration and decision. They are as under:

> "(i). Whether on the facts and circumstances of the case and in view of the scope of 'turnover tax' as explained in the Minister's Budget Speech of 1987, was the Tribunal justified in holding that excise duty collected and remitted by Beverages Corporation under the amended provisions of the Abkari Laws constitute turnover of the petitioner for the purpose of levy of turnover tax under Section 5(2A)/5(2C) of the KGST Act, 1963?
>
> (ii) Should not the Tribunal have held that turnover tax under Section 5(2A)/5(2C) on the actual turnover of the dealer i.e the amount reaching the till of the dealer and not on any fictional or deemed price which is not received by the petitioner?
>
> (iii) Whether on the facts and circumstances of the case and particularly in view of Section 5(2A)/2(C) read with item 53 of the First Schedule to the KGST Act should not the Tribunal have held that turnover tax on excise duty is payable only by

> Beverages Corporation and by subsequent sellers of Indian Made Foreign Liquor and not by the manufacturers namely the petitioner who are not liable to pay excise duty?"

4 .The Supreme Court in the decision reported in *State of Kerala* v. *Maharashtra Distilleries Ltd*. [(2005) 141 STC 358] while considering a similar issue raised in these Tax Revision Cases at paragraph 82 has stated as under:

> "In view of our finding that the duty imposed is not a duty of excise but represents the privilege price charged by the Government from KSBC as a consideration for parting with its exclusive privilege to sell liquor by wholesale in the State of Kerala, the respondents are not liable to include that duty paid by the Beverages Corporation in their turnover. However, the position changed radically with effect from January 5, 1999. The High Court noticed this fact in paragraph 67 of the judgment, namely - that with effect from January 5, 1999 in view of the amendment to Foreign Liquor Rules, the KSBC could not purchase IMFL from the manufacturers/distillers without payment of duty. In view of the amendment, the KSBC had to pay duty before it could lift the stock of IMFL from the manufacturers' warehouse to its own licensed premises. Thus the KSBC paid to the manufacturers the duty payable in respect of IMFL and consequently the amount of duty paid formed part of the consideration for which the property in goods passed to the KSBC. We have earlier noticed the amendments made to the Foreign Liquor Rules which leave no room for doubt that with effect from January 5, 1999 the manufacturers/distillers (respondents herein) were bound to include in their turnover the amount paid to them by the KSBC by way of duty levied under the Abkari Act together with the price of the liquor purchased from them. The learned Judges noticed this fact but granted relief in broad terms as prayed for by the respondents. In our view the High Court fell into an error in doing so. It ought to have held that in any event with effect from January 5, 1999 the respondents-manufacturers/distillers were bound to include in their turnover the amount of duty paid to them by the KSBC since that formed part of the consideration for sale of IMFL to the said Corporation. We, therefore, hold that from January 5, 1999, the date with effect from which the KSBC started paying duty to the manufacturers/distillers before lifting the stock of IMFL to its own licensed premises, the amount of duty paid formed part of the consideration paid by the Corporation to the manufacturers and consequently it formed part of the turnover of the manufacturers".

5. The law declared by the apex Court would apply to the assessments made prior to 5.1.1999.

In view of the above, the questions of law raised by the assessee require to be answered in favour of the assessee and against the Revenue.

Ordered accordingly.

All pending interlocutory applications are dismissed.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-